SUPREME COURT, U. S.
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IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 181

PETER J. LADZINSKI,

Petitioner,

against

SPERLING STEAMSHIP & TRADING CORP.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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To the Honorable The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review that part of a judgment of the United States Court of Appeals for the Second Circuit, entered in the above cause on February 25, 1970, which affirmed that part of a decision of the United States District Court for the Southern District of New York dismissing Plaintiffs claim for double wages under 46 USC §596:

Citations to Opinions Below

The opinion of the District Court was delivered by District Judge Herlands. The Court of Appeals decision was rendered February 25, 1969 by Judges, Hon. J. Edward Lumbard Chief Judge, Hon. Robert P. Anderson Circuit Judge, Hon Thomas F. Croake District Judge. Said opinions are printed in the appendix.

Jurisdiction

The judgment of the United States Court of Appeals was dated and entered Feb. 25, 1970 and is in the Appendix hereof. The jurisdiction of the Court is invoked as this pertains to Admiralty questions and the application and interpretation of former cases decided by the United States Supreme Court to wit *Johnson* v. *Isbrandtsen Co.* D.C. Pa. 1950, 72 S.Ct. 1011, 343 U. S. 779, 96 L. Ed. 1294 and also *Nelson* v. *Moore McCormack Lines, Inc.*, C.A.N.Y. 1962, 297 S.Ct. 1142, 369 U. S. 873, 8 N.Ed. 2d 276.

Dates of Judgments

The judgment of the District Court was rendered by Judge Herlands and filed March 31, 1968 which denied plaintiffs right of recovery of double wages under U.S.C. annotated §396. United States Circuit Court of Appeals for the Second Circuit on February 25, 1970 affirmed with costs the decision of the District Court.

Questions Presented

1. Plaintiff-Appellant, states that the Court committed grievous error in not ruling penalties under section 596 for wages and transporation which were withheld from this seaman and that transportation and or wages that seaman was entitled to while receiving transportation are not wages under §596.

(a) Are wages which a seaman is entitled to receive when discharged from a vessel for medical reasons and as per further agreement between the employer (owners of vessel) and union with which vessel has a contract calling for transportation and wages, wages within §596 which calls for a penalty.

(b) Are wages which are called for in a Union Contract and/or the entire item of transporation wages within §569 of the United States Code Annotated.

In this instance the Plaintiff an engineer joined a vessel at Philadelphia and signed a coastwise voyage; at New Orleans said seaman signed foreign articles via San Francisco, California; the seaman was discharged with a medical discharge from San Francisco, California on or about April 29, 1965. The vessel had a union agreement with National Maritime Engineers Beneficial Association of which Plaintiff was a member which called for the return transportation to the East Coast of a seaman discharged in a port other than the port of original engagement.

The Plaintiff demanded the transportation money upon his discharge and continuously demanded said monies

which he was entitled to, continuously thereafter, but at no time were these monies paid to him. In addition to said monies the vessel also withheld from him unearned wages until the end of a voyage, maintenance and cure. No offer was made for the monies due Plaintiff other than an offer to buy the entire case stated, above plus a personal injury case which plaintiff had in another Court. The owners of the vessel by refusing to pay seaman what he is actually entitled to and further by bargaining for a release of all claims to buy off what they otherwise are legally obligated to do even if not otherwise liable, gave rise to the penalties and payment of double wages as is called for in §596 of U. S. Code Annotated.

The Supreme Court of the United States in the *Johnson* v. *Isbrandtsen Co.* case and the *Nelson* v. *Moore McCormack* case stated above, in effect ruled that wages and/or the entire item of transportation is an item of wages upon which penalty of two days' wages for every day delay runs.

The next question presented is, until what time are both wages and penalties payable and as per cases to be cited said wages and penalties are payable until the actual date of payment.

Statutes and Ordinances

1. §596 of Title 46 of U.S.C. Annotated reads as follows:

"Sect. 596 Time for payment

"The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement

under which he was shipped, or at the time such seaman is discharged, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or co-owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

National Maritime Engineers Beneficial Association District Number 1, Union Agreement which controls under Section 29, Page 49, Section 1(a) reads as follows:

"1. (a) When a vessel terminates a voyage at a port other than the original port of engagement, first class transportation, wages and subsistence at $10 per day back to the original port of engagement shall be furnished to each licensed engineer, officer who terminates his services aboard the respective vessel; provided, however, that licensed engineers and coastwise vessels shall not be furnished transportation to original port of engagement unless he has made a complete round voyage. Termination of a coastwise voyage shall be deemed to take place in the port where the vessel's final payoff of her crew for the voyage takes place.

"(b) The original port of engagement shall be the port in the United States where the licensed engineers first employed by the company regardless of where articles are signed or type of articles signed.

"(c) * * *

"(d) Transporation in accordance with this subsection of the agreement will be paid to licensed engineers whose services are terminated in a United States port other than the port of original engagement for legitimate illness or injury requiring hospitalization or out-patient hospital treatment."

Blacks Dictionary under "wages" is as follows:

"Wages—a compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant or any other person hired to do work or business for him; Every form of remuneration payable to an individual for a given period for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payment in time, tips, and other similar advantage received from the individuals, employer or directly with respect to work for him. Ernst v. Industrial Commission, 266 Wis. 205, 16 NY2d 867. The court then continues in its decision on page 11 to give other dictionary highlights of wages which appear to be a broad definition of wages."

General Maritime Law.

Statements

This is an action by an injured seaman Plaintiff, seeking to recover unearned wages until the end of a voyage, maintenance and cure, transportation to the original port of engagement, and statutory penalty of double wages for wrongful withholding of wages under section 46 U.S.C. §596.

Plaintiff is a licensed third assistant engineer. Plaintiff herein was aboard the vessel S.S. EAST HILLS as a third assistant engineer from March 12, 1965 the day that the defendant herein acquired said vessel at Chester, Pennsylvania.

Thereafter, the plaintiff sailed on certain coastwise voyages with said vessel.

On April 8, 1965, at New Orleans, Louisiana, the plaintiff herein signed for a foreign voyage to the Pacific by way of San Francisco.

On or about April 19, 1965, while the vessel was on the high seas and traveling to the West coast, the plaintiff was injured about the eye, head and shoulders. When the vessel arrived on the West coast, the plaintiff obtained a Master's Certificate and went to the U.S. Public Health Service Hospital on the West Coast, and on April 27, 1968, was given a non-fit-for-duty slip from the United States Public Health Service Hospital in San Francisco, and on April 28, 1965, the plaintiff was paid off in San Francisco and the

discharge pay voucher shows the following notation under "Remarks":

> "Sperling S.S. & Trading Corp. paid off San Francisco unfit for duty. This man Moore McCormack employee who agreed make one voyage. No return transportation paid pending your approval.".

For further clarification of the facts indicating Moore McCormack employee, Mr. Ladzinski, originally joined the vessel when it was owned by Moore McCormack Shipping Lines and the vessel was known as the Mormac Wren in Baltimore on December 11, 1964. He joined this vessel in Baltimore. Thereafter, this vessel was sold to the Sperling Steamship & Trading Corp. on March 12, 1965 and the plaintiff herein was on said vessel from the original date of December 11, 1964, up until the date he was discharged and paid off on April 28, 1965.

The plaintiff herein demanded from the Captain the monies for his transportation which was not paid to him.

The plaintiff went to the hospital for treatment on April 29, 1965, and also April 30, 1965, and was given an appointment to return May 3, 1965. On May 3, 1965, the United States Public Health Service Hospital at San Francisco, California, said that Mr. Ladzinski could travel to Baltimore, and he would receive further treatment from the United States Public Health Service Hospital in Baltimore, Maryland.

The plaintiff then took a bus using his own money from San Francisco, California, and came to Baltimore, Maryland. He arrived in Baltimore, Maryland, on May 6, 1965.

On May 10, 1965, the plaintiff went to the Marine Hospital in Baltimore, Maryland and was examined for his neck and shoulders and x-rays were taken and he was found not fit for duty. He was given an appointment to return May 14, 1965, for his neck and also an eye appointment was made for him to come May 11, 1965. On May 11, 1965, he was given a non-fit for duty for his eye and was told to return May 19, 1965. On May 14, 1965, he returned to the Marine Hospital for his neck injuries and was examined at the time and was told to return to the orthopedic clinic on July 6, 1965. On May 19, 1965, the plaintiff returned for the eye injury, was examined and was told that his eye was alright, but that he could not receive a duty slip because he was already non-fit for duty because of his neck and shoulder injuries. On July 6, 1965, the plaintiff returned to the orthopedic clinic of the Marine Hospital in Baltimore, Maryland, and received a fit-for-duty slip.

With reference to the demand for transportation and for maintenance and cure and payment of wages to the end of the voyage, the following took place: Original demand was made to the Captain of the vessel S.S. EAST HILLS in San Francisco, California on April 28, 1965. Transportation was not paid to the seaman and a notation was made on the pay voucher to this effect.

May 8, 1965, plaintiff sent a letter to Sperling Steamship Company for transportation and received no reply. May 18, 1965, plaintiff sent a registered letter to Sperling Steamship Corp. again demanding transportation and maintenance and cure money and a letter in reply was sent to plaintiff indicating demand for more medical ab-

stracts and with reference to the transportation the letter reads:

> "In regard to your request for return transportation, we will reimburse you upon a receipt of documentation, tickets, stubs, etc., indicating the amount you expended in returning to Philadelphia."

On May 22, 1965, plaintiff wrote to the hospital in San-Francisco to get the various reports and duty slips which finally were received for both eye, neck and shoulders on or about June 25, 1965.

On June 27, 1965, the plaintiff forwarded to Sperling Steamship Corp. all medical abstracts and asked for the money that he had coming to him under the agreement for transportation, calling for $322.33, maintenance and cure for 69 days at $8.00 per day amounting to $552.00 and demanded his unearned wages. No reply was received.

On July 7, 1965, plaintiff called the Sperling Steamship Corp., spoke to one, Binderoff, Treasurer and was told to call in the next day.

On July 8, 1965, plaintiff again called Binderoff and he was told that they refused to pay the transportation and unearned wages, but would pay him maintenance and cure only up to May 19, 1965.

In July, 1965, the plaintiff again wrote to Mr. Binderoff and asked for maintenance and cure for 69 days, transportation and unearned wages.

On July 7, 1965, received a letter from Binderoff of Sperling Steamship Corp. with a check for $160 for main-

tenance and cure up to May 19, 1965, and it stated that "we feel that this payment covers the entire amount due you".

On July 19, 1965, plaintiff again went to Binderoff, but Mr. Binderoff was not in.

On July 20, 1965, plaintiff spoke to Mr. Binderoff and Mr. Binderoff stated that that was all that they owed him and if he was ready to sign a general release they will talk to him. Plaintiff again demanded to collect transportation, maintenance and cure and unearned wages to the end of the voyage which was again refused unless a general release would be signed by him.

As is stated in the facts the Plaintiff herein was entitled to certain specific items which included transportation, unearned wages and maintenance and cure. The Plaintiff demanded all of the things which were due him and the employer refused to pay what he was obligated to do unless a release was delivered for all items. Assuming that double wages may not have been allowed at the moment that the owner requested a release the double wages would commence to run.

> "Purpose of this section providing that every master or owner who refuses to make payment to seaman in the specified time and without sufficient cause shall pay seaman a sum equal to two days' pay for each and every day during which payment is delayed, is to shield seamen against pressure to release claims even ill supported claims, by withholding from them sums as to which their right is not in dispute. Prindes v. The African Pilgrim C.A. Va. 1959, 266 F2d 125.
>
> "Where seaman was logged two days' pay for failure to return to ship one hour before posted sailing

time and seaman was offered his total wages less logged pay and was refused any payment unless he would sign a mutual release of all claims, even if logging penalty was proper, seaman was entitled to liquidated damages for withholding of undisputed part of his wages until he would sign a release Id.

"A Seaman is entitled to double wages or "waiting time" if wages concededly due are tendered only on condition that he will release disputed claim Id.

"A tender of wages upon condition that a full release be signed will not stop penalty provision of this section for failure to pay seaman's wages, but will in fact invoke the penalty provision. Dahl v. The Amigo D.C. Ala 1962202 F. Supp 890 Affirmed 313 F 2d 370, certiorari denied 84 S. Ct. 76 375 US 831, 11 L. Ed. 2d 62.

"This case paraphrased as follows: Master should not impose upon seaman any conditions as to payment especially he should not impose as a condition for payment a waiver legal rights the seaman may have. The Lake Gunther Trintalifilas v. Newtex SS Corp., 46 USCA 596 & 597 40 Fed. Rep. 2d 31, and then Circuit Ct of Appeals April 8, 1930."

In the *Johnson* case which has been cited above and which the Honorable Supreme Court under practically similar circumstances where a seaman was discharged at a port other than the port of original engagement and where the vessel had a union agreement similar to the one in question but instead of the seaman actually getting his transportation and his wages the union agreement called for a fly award which is a liquidated sum in lieu of transportation wages and subsistence during the time of transportation. In that the case the Court specifically stated:

"Where seaman was discharged at port other than port at which seaman signed on vessel, and under ship-

ping articles seaman was entitled to transportation back to port at which signed on, amount due to seaman for such transportation was an item of 'wages' within this section requiring owner of vessel making coasting voyages to pay every seaman his wages within specified time."

Johnson v. *Isbrandtsen Co.*, D.C. Pa. 1950, 91 F. Supp. 872, aff'd 190 F. 2d 991, aff'd 72 S. Ct. 1011, 343 U. S. 779, 96 L. Ed. 1294.

In the *Johnson* case the Court stated the transportation when it was an item of wages upon which double wages run. In the *Johnson* case in the opinion of the writer no award of double penalty and double wages was made because the court felt that the master believed that he was entitled to withhold certain wages under a mistaken belief that he had the right to hold said wages.

"Where seaman willfully and without justification inflicted injuries upon another seaman, and vessel owner withheld payment of wages of seaman who caused injuries, under honest but mistaken belief that withholding was justified by law, seaman was not entitled to recover under statute double wages because of withholding. Johnson v. Isbrandtsen.

"Seaman was entitled to no more than expenses of transportation, including wages and board for travel time to the West coast, after voyage terminated in New York after approximately two months, under articles calling for a voyage from San Francisco to various points and back to final port of discharge on the West coast of the United States, for a term not exceeding nine months."

Nelson v. *Moore McCormack Lines Inc.*, C.A.N.Y. 1962, 297 F. 2d 936, cert. denied 82 S. Ct. 1142, 369 U. S. 873, 8 N. Ed. 2d 276.

In both the *Nelson* v. *Moore McCormack* case and the *Johnson* case which are practically identical in point the court made a statement that transportation is an item of wages upon which penalties run. The fact that double wages were not assessed in those two particular cases were for various individual circumstances of the case but the principle that the court set down was that penalties run on this item of transportation.

The District Court ignored the rule set down from these two cases and flatly rejected that the actual wages due under the union agreement were wages within the meaning of the law that the penalty would run and further did not even bother to examine the conduct of the individuals and determine if these wages were justified or not justified or examine the duration of the penalties.

The following are some cases that permitted the payment of penalty and double wages: *Spero* v. *Argodon*, D.C. Va. 1957 150 F. Supp. 1. The following cases hold that under the same or similar circumstances penalties would run and with reference as to how much time penalty will run:

> "Duration of penalty period for witholding wages of seamen without sufficient cause is to be determined in exercise of discretion of trial judge. Kontos v. SS Sophie C D.C. Pa. 1964 236 F. Supp 664.
>
> "The Command of this Section that master or shipowner who refuses or neglects to pay seaman's wages without sufficient cause shall pay sum equal to two days' pay for each and every day during which payment is delayed is mandatory; judicial discretion does

not exist to tailor the penalty for wrongful withholding from a seaman's wages to equities of particular case. Swain v. Isthmian Lines Inc., C.A. Pa 1966 360 F2d 81.

"The phrase without sufficient cause must be taken to embrace something more than valid defenses to the claim for wages. Otherwise it would have added nothing to the statute. In determining what other causes are sufficient, the phrase is to be interpreted in the light of the evident purpose of the section to secure prompt payment of seamens' wages, H.R. Rep. 1657, Committee on the Merchant Marine & Fisheries, 55th Cong. 2d Sess., and thus to protect them from the harsh consequences of arbitrariness and unscrupulousness of their employers to which as a class they are peculiarly exposed. Collie v. Ferguson Va. 1930, 50 S. Ct. 189, 281 US 52, 74 L. Ed. 696.

"This Section providing for payment of seamen upon discharge within specified times must be liberally construed in favor of seamen Johnson v. Isbrandtsen, 343 U.S. 779, 96 L. Ed. 1294."

Therefore it is respectfully stated that it was error for the District Court not to award penalties and that said penalties must be paid until actual time of payment and that the court may not tailor the facts to meet a case but that in this instance the lower court ruling should be overturned and payment should be made until the actual date of recovery. The Swain v. Isthmian Lines, Inc. C.A.Pa. 1966 360 F. 2d 81, holds: "The command of this Section is that master or ship owner who refuses or neglects to pay seamans wages without sufficient cause shall pay sum equal to two days' pay for each and every day during which payment is delayed is mandatory; judicial discretion does not exist to tailor the penalty for wrongful witholding from a seaman's wages to equities of particular case."

Conclusion

That part of the judgment appealed from should be reversed and the defendant should be required to pay the sum of $77.20 from May 2, 1965 until the date of actual payment to the Plaintiff herein.

Reasons Why the Writ Should Be Granted

A. An important question of Federal Law remains to be settled.

B. Conflict exists between the decision of the United States Supreme Court in the Johnson Case and the present case at hand.

It seems quite clear that the Supreme Court of the United States laid down certain law in the *Johnson* v. *Isbrandtsen* case and also in the *Nelson* v. *Moore McCormack* case in that it stated that transportation is an item of wages upon which penalty runs.

The District Court ignored the ruling of the Supreme Court of the United States and interpreted these statutes as it saw fit.

What the District Court in effect did was further bring about a confusion as to what the law is and ruled against the seamen who are wards of the court and the courts must protect them against the unscrupulous acts of the employer.

In this very case, to speak like a seaman, a seaman was absolutely entitled to receive his unearned wages until the

end of the voyage, his maintenance and cure and his transportation. If a seaman must go to an attorney in order to try and get what he may be entitled to and if after the passage of several years as in this case the seaman is only entitled to what he could have gotten at any time and the employer is only required to pay those items in spite of the fact that the employer in the instant case ignored every legal principle ignored the law, demanded a release, and some five years later only pays what it wanted to pay. Then under those circumstances what good is the ruling of the *Johnson* case and the *Moore McCormack* case when in effect a seaman can be turned ashore pennyless.

Another reason why the writ should be granted is because of the fact that the District Court indicated that the transportation is not an item of money, or a right to which the plaintiff was entitled to absolutely at the time of his discharge as under the circumstances of the present case.

Transportation as in this instance is an item which is due the seaman upon his discharge from the vessel and not six or seven months later after he must proceed to go to court. If the employer refused to give that money he must be made to pay the penalty of two for one.

The Issues Herein Are of Primary Importance to Seamen

Some of the issues, at least for seamen, are of the utmost importance. The decision of the court below unsettles the decisions of the U.S. Supreme Court cases and creates potential sources of doubt and litigation.

Conclusion

Wherefore petitioner respectfully requests this court to issue its writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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Opinion of United States District Court

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

66 Civil 1030

PETER J. LADZINSKI,

Plaintiff,

against

THE SPERLING STEAMSHIP AND TRADING CORP.,

Defendant.

Appearances:

THOMAS J. LUKAS, Esq.
Attorney for Plaintiff.

ZOEK, PETRIE, SHENEMAN & REID, Esqs.
Attorneys for Defendant
EDWIN K. REID, Esq.
HOWARD MCCORMACK, Esq.
of Counsel.

HERLANDS, District Judge:

In this action by an injured seaman, plaintiff seeks to recover unearned wages to the end of the voyage, maintenance and cure, and transportation. Plaintiff also demands the statutory penalty of double wages for alleged wrongful withholding of "wages" under 46 U.S.C. §596 (1964).

For the reasons amplified in this opinion, the Court concludes that plaintiff is entitled to the claimed amounts of unearned wages, maintenance and cure, and transportation. However, his claim for double wages is dismissed because of no "wages" within the meaning of 46 U.S.C. §596 (1964) were withheld.

The Complaint

It is alleged that on March 12, 1965, the *S.S. Mormacwren* was sold to defendant in Chester, Pennsylvania and renamed *S.S. East Hills*. Plaintiff, who had been employed on the *Mormacwren*, signed coastwise articles as a third assistant engineer on March 12, 1965. The vessel made a voyage from Chester, Pennsylvania to New Orleans where, on April 8, 1965, plaintiff signed foreign articles for a voyage from New Orleans to the Far East (via the West Coast), and back to a port in the continental United States.

It is further asserted that plaintiff fell ill in the service of the vessel without any fault on his part, and was forced to leave the ship on April 27, 1965 at the port of San Francisco, California, where he was hospitalized. Plaintiff signed-off the vessel for medical reasons on April 28, 1965, with a master's certificate.

The complaint charges that, upon discharge, the master paid plaintiff his earned wages through April 28, 1965 but refused to provide for plaintiff's transportation back to Chester, Pennsylvania. Plaintiff took a three-day bus trip from San Francisco to Baltimore, Maryland, his home. He claims he made several demands upon defendant for maintenance and cure, transportation, and unearned wages to the end of the voyage. Defendant's only payment to plaintiff to date has been $160 for maintenance and cure from April 29, 1965 to May 17, 1965.

Plaintiff argues that, as an injured seaman, he is entitled to the following relief:[1]

(1) A sum of $1,257.00 which constitutes unearned wages from April 29, 1965 to June 16, 1965, the date upon which the voyage did in fact terminate. This claim is based upon the well-settled doctrine in admiralty that an injured seaman may recover the wages he would have earned had he continued in the vessel's service.

(2) $392.00 for maintenance and cure from May 18, 1965 until July 6, 1965, the date upon which plaintiff claims he was declared fit for duty. This claim is also predicated on general American maritime law, which requires the owner of the vessel to provide for the maintenance and cure of an injured seaman until he is declared fit for duty. The sum of $392.00 was computed by using $8.00 per day as the base figure, this being the amount provided by the existing union agreement.[2]

(3) Transportation in the amount of $322.33. Plaintiff asserts that, under Section 29 of the union agreement, he is

1. Plaintiff's *Proposed Findings of Fact and Conclusions of Law* and *Plaintiff's Memorandum of Law* drop the fifth cause of action, which is for attorneys' fees incurred in connection with the claim for maintenance and cure.

The *Pre-Trial Order*, dated February 27, 1968, limits plaintiff's original claim of $5,000.00 for maintenance and cure to $392.00.

2. Defendant does not dispute the fact that Plaintiff's Exhibit 1 entered into by the National Marine Engineers' Beneficial Association, District No. k, (herein referred to as the "Union Agreement" or "Agreement"), was the union agreement in effect during the period relevant to this case. Pre-Trial Order, February 27, 1968, 3a. The Court notes that, for some unexplained reason, the Sperling Steamship Company, defendant herein, is not among the Dry Cargo Companies listed as signatories to the printed Union Agreement. Plaintiff's Exhibit No. k, at 78-79.

Section 35 of the Agreement sets the base figure for maintenance and cure benefits at $8.00 per day.

entitled to a sum for "transportation," which consists of first class transportation, subsistence at $10.00 per day for each day of travel, and wages for each day of travel back to Chester, Pennsylvania.[3]

(4) Double wages under 46 U.S.C. §596. Plaintiff contends that the master's refusal to pay for the transportation requested and defendant's subsequent and continuous refusal to pay such transportation, were without sufficient cause and violate the statutory duty of prompt payment of "wages" under §596, which imposes a penalty of "two days' pay for each and every day during which payment is delayed." Plaintiff seeks recovery of $77.20 per day for each day during the period beginning May 2, 1965 (four days after discharge) to the date when payment is actually made.[4]

At the trial, defendant tendered judgment in the sum of $1,257.00 to satisfy plaintiff's claim for unearned wages and $392.00 to satisfy plaintiff's claim for maintenance and cure. Plaintiff accepted both tenders, which were made by

3. Section 29, subsection 1(a) of the Agreement calls for transportation back to the "original port of engagement", a term used in the maritime industry and defined in Section 29, subsection 1(b) of the Agreement as "the port in the United States where the licensed engineers (were) first employed by the company regardless of where articles are signed or type of articles signed." This is apparently Chester, Pennsylvania, where plaintiff signed coastwise articles with defendant.

The parties have stipulated that Chester, Pennsylvania shall be considered as the port of original engagement. However, plaintiff's calculation of the amount of first-class transportation allegedly owed to him is based on the cost of pullman transportation via rail with lower berth to Baltimore, Maryland, plaintiff's home town. Because the defendant does not dispute that the fare is owed, or contest the amount demanded as fare by plaintiff (*See* Opinion of the Court, *infra*, at pages 6a-7a, the Court simply points out the inconsistency).

4. The denial of the claim makes it unnecessary to discuss the correctness of the method utilized by plaintiff to arrive at a figure of $77.20, an amount which was contested by defendant.

defendant without admitting any of the facts underlying the claims.[5] The only claims requiring disposition by the court are those for transportation and for the statutory double wages.

This opinion contains the findings of fact and conclusions of law which constitute the grounds of the Court's decision. Fed. R. Civ. P. 52(a).

The Claim for Transportation

The parties agree that the union agreement[6] (hereinafter "Agreement") controls the disposition of plaintiff's claim for transportation. They differ, however, in their interpretation of the Agreement, the controlling portions of which are set forth below.[7]

5. Plaintiff has apparently brought a personal injury action against defendant in a Baltimore state court; and defendant does not wish to prejudice its defense against that suit by admitting any facts concerning plaintiff's injuries.

6. The court notes the fact that Section 45(2) of the Agreement provides that the Agreement "shall be, and be deemed to be, incorporated" in the Shipping Articles. It further provides that "appropriate notation thereof be made on the Shipping Articles." The foreign articles, signed in New Orleans on April 8, 1968, contain no such notation. This, however, is immaterial.

7. "Section 29. Transportation.

1. (a) When a vessel terminates a voyage at a port other than the original port of engagement, first-class transportation, wages and subsistence at $10.00 per day back to the original port of engagement shall be furnished to each licensed engineer officer who terminates his services aboard the respective vessel; provided, however, that licensed engineers on coastwise vessels shall not be furnished transportation to original port of engagement unless he has made a complete round voyage. Termination of a coastwise voyage shall be deemed to take place in the port where the vessel's final pay-off of her crew for the voyage takes place.

(b) The original port of engagement shall be the port in the United States where the licensed engineers (sic) first employed by

Section 29, subsection 1(d) of the Agreement provides that a licensed engineer whose services are terminated for specified medical reasons in a United States port other than the port of original engagement is entitled to "(t)ransportation in accordance with this subsection of this agreement. * * *" Plaintiff argues that the quoted phrase refers to subsection 1 of Section 29 of the Agreement, and more specifically to sub-subsection (a) of subsection 1, which contains a built-in definition of the "transportation" to be paid. The constituent elements as so defined are: (1) first-class transportation; (2) wages for each day of travel; and (3) subsistence at $10.00 per day. Plaintiff, therefore, claims $215.44 for first-class transportation to Chester, Pennsylvania,[8] $76.89 for three days' wages while travelling;[9] and $30 for subsistence, —a total of $322.33.

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the Company regardless of where articles are signed or type of articles signed.

* * *

(d) Transportation in accordance with this subsection of the agreement will be paid to licensed engineers whose services are terminated in a United States port other than the port of original engagement for legitimate illness or injury requiring hospitalization or out-patient hospital treatment.

* * *

3. First class transportation on land is defined as follows:

(a) Pullman transportation via rail with lower berth on overnight trips.

(b) Air transportation.

(c) When first class transportation by rail or air is not available, bus facilities may be used."

8. Plaintiff claims $146.48 for pullman transportation via rail to Baltimore and $69.96 for lower berth under the scheme outlined in Section 29, subsection 3(a) of the Agreement. *See* Agreement, Section 29, subsection 3(a), *supra* at n. 7. Plaintiff actually took a three-day *bus* trip from San Francisco to Baltimore; and there is nothing in the record which clarifies his claim for reimbursement of the *rail* fare. Defendant does not, however, contest this portion of the claim. *See* Opinion of the Court, *infra* at page 6a.

9. Plaintiff's wages, as set forth in the Shipping Articles of April 8, 1965, are $629.39 per month. The parties agree that this is equivalent to $25.63 per day.

Defendant, on the other hand, claims that sub-subsection (d) of subsection 1 and sub-subsection (a) of subsection 1 are to be treated as completely separate and distinct, the former dealing with injured seamen, and the latter only with the termination of a voyage at a port other than the original port of engagement. Defendant contends that an injured seaman is entitled only to the cost of transportation back to the original port of engagement, *i.e.*, the fare plus $10.00 a day for subsistence while travelling; that he is not entitled to "wages" as provided in sub-subsection (a) of subsection 1 of Section 29 of the Agreement because the general maritime law allows the injured seaman to recover unearned wages to the end of the voyage, and that to require an additional payment of wages for each day of travel would result in a double recovery of wages, which would not have been intended by the contracting parties.

Defendant's argument is unpersuasive. Both sides agree that sub-subsection (d) covers the "transportation" to be supplied to an injured seaman. However, while sub-subsection (d) itself does not itemize the constituent elements of "transportation", it expressly declares that "transportation in accordance with *this subsection*" (emphasis added) will be paid. The words "this subsection" means subsection 1. Part of subsection 1 is sub-subsection (a). Nowhere in subsection 1, or anywhere else in Section 29, even under a most searching reading, is there any limitation of plaintiff's recovery to the items of first-class fare and subsistence. Sub-subsection (d) plainly serves the obvious purpose of enabling an injured seaman to recover "transportation" as defined in the Agreement, and, in the same manner as his more fortunate co-workers who, under sub-subsection (a), are returned uninjured to the port of original engagement upon the termination of the voyage.

The intendment of the Agreement is clear; there is no ambiguity. If the intention of the contracting parties were otherwise, as defendant argues, they failed to evidence such

contrary intent in the document whose language now binds them.

Defendant's argument—that plaintiff would be receiving a windfall in the form of double wages during his period of travel—turns out, upon analysis, to be fallacious. Under Section 29, subsection 1 (a) of the Agreement, when a vessel terminates a voyage at a port other than the original port of engagement, the seaman receives, in addition to his earned wages, a travel allowance consisting of wages for each day of travel plus fare and subsistence. Assuming *arguendo* that a hypothetical voyage continues for twelve months, and travel time to the port of original engagement is three days, the seaman apparently receives, under the contract, twelve months of earned wages plus three days' additional wages along with fare and subsistence. Defendant admits this is clear. The seaman who is injured on the last day of the tenth month of the same hypothetical voyage, signs-off the ship, and travels to the port of original engagement during three days, would, using the Court's interpretation of Section 29, receive the following: ten months of earned wages; two months of unearned wages; and wages for each day of travel to the port of original engagement along with fare and subsistence. The injured seaman is thus placed in precisely the same economic position as the uninjured seaman who completes the voyage. No double wages are recovered; both classes of seamen receive the transportation allowance which was bargained for under the union contract. This equality of treatment provided by the Court's interpretation demonstrates that defendant's construction of Section 29 is discriminatory and illogical.

The Court concludes that Section 29 of the Agreement entitles plaintiff to first-class transportation, wages for each day of travel to the port of original engagement, and $10.00 subsistence for each day of such travel. Plaintiff is granted judgment for the full amount of his claim for transportation, which is $322.33.

Opinion of United States District Court

The Claim for Penalty Double Wages

Plaintiff's final claim is for penalty wages under 46 U.S.C. §596.[10] Defendant contends that, as a matter of law, the "transportation" which is allegedly withheld is not "wages" within the meaning of the statute and, therefore, the penalty cannot be invoked. The Court agrees with this construction of the statute. Consequently, there is no need to resolve the question whether defendant met the burden of providing sufficient cause for withholding transportation.[11]

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10. R.S. §4529, as amended, 38 Stat. 1164-1165, 46 U.S.C. §596 (1964):

"Time for payment

The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage. This section shall not apply to fishing or whaling vessels or yachts."

11. The major portion of the trial testimony was on the issue of "sufficient cause" under 46 U.S.C. §596 (1964). Two of defendant's witnesses testified about their understanding of 46 U.S.C. §596 and Section 29 of the Agreement for the purpose of providing that their understanding led them in good faith and for sufficient cause, to deny plaintiff's demands for wages while travelling and his later demand for penalty wages. The Court places no reliance on this testimony in deciding whether, as a matter of statutory interpretation, the transportation allowance constitutes "wages" under §596.

The issue — whether "transportation" constitutes "wages", as that term is used in Section 596—requires the court to master the conventional tools of statutory interpretation. Before pursuing that inquiry, however, the Court considers it helpful to delineate the links in the chain of plaintiff's reasoning.

Stressing the fact that daily wages constitute a specified element of the transportation allotment defined in Section 29 of the Agreement,[12] plaintiff's first proposition is that the Agreement thereby treats transportation as part of the compensation of a seaman; and, hence, "transportation" should be equated with "wages". Plaintiff's second proposition—a non sequitur from the first—is that transportation should also be considered "wages" under 46 U.S.C. §596. To buttress that proposition, plaintiff argues that the elastic concept of "wages" covers a broad spectrum of employee benefits. In support of a latitudinarian construction, plaintiff also points to the fact that seamen are wards of the court; that, traditionally, the court has adopted a liberal approach to legislation enacted for the protection of seamen; that this Court should, therefore, construe the term "wages" in the broadest possible manner; and that the Court should ultimately conclude that "transportation" is "wages" within the meaning of 46 U.S.C. §596.

The Court rejects as unpersuasive plaintiff's contention that the Agreement itself deems transportation to be wages. Section 29 is entitled TRANSPORTATION. An entirely sep-

12. Plaintiff does not limit himself to the contention that the wage element in Section 29, subsection 1(a) is the crucial factor which transforms "transportation" into "wages". Plaintiff's theory is more general: he urges that transportation is provided to the seamen in exchange for services rendered and is, therefore, one form of the "wages" earned by him. Thus, even assuming *arguendo* that the Court had denied the claim for three-days' wages as part of transportation, plaintiff would still contend that "transportation" constitutes "wages" under the Agreement, and under the statute.

arate section is captioned WAGES.[13] Moreover, nowhere does the Agreement state, either expressly or impliedly, that the items recoverable as transportation are to be considered wages. Plaintiff can point only to the aritlmetic fact that the seaman's daily wage enters into the computation of the transportation allowance.

The salient fact is that Section 7 of the Agreement, dealing with the seaman's monthly wages, *i.e.* his salary, speaks in terms of monies owing for services performed[14] and, occasionally, uses the word "salary" interchangeably with "wages".[15] The absence of similar language in Section 29 of the Agreement is a meaningful indication that the contracting parties did not regard "transportation" as synonymous with or as an item in the same category as "wages" to which they, in fact, assigned a rather narrow connotation.

The Court is not suggesting that the Agreement may not be read as broadly treating the transportation allowance as an employee benefit granted only in the light of the rendition of services. The critical circumstance, however, is that the Agreement categorizes "wages" only in the

13. *Agreement*, Section 7.

14. Id. at Section 7(f).

15. Id. at Section 7(d). Other sections of the Agreement support the inference that the Union Agreement does not consider transportation to be a part of wages. In Section 1, the provision dealing with replacement engineers refers to paying "all necessary transportation expense, wages and subsistence,"—thus differentiating between these items.

Section 4(a), dealing with discharge, states:

"Wages shall be deemed to include subsistence and room allowance for the period involved."

Section 4(c), dealing with payoff procedure upon discharge, provides for payment of the wages defined in section 4(a) by a certain time. Transportation is clearly not included in this definition, and is similarly treated as a separate item throughout the Agreement.

puristic and precise sense of that word and, therefore, it cannot be interpreted logically or practically so as to make "transporation" correspondent with "wages".

If *arguendo* plaintiff's interpretation of the Agreement were accepted, the Court is of the view that, in the circumstances of this case, the parties did not and could not contract to expand the meaning and coverage of the word "wages" in the penalty provision of the statute beyond that intended by the Congress.

It has been argued that, although maintenance and cure benefits have been held not to be "wages" within the meaning of 46 U.S.C. §596, a union agreement which allegedly deems them to be wages can expand the scope of the statute. This Court has consistently refused to follow that line of reasoning.[16] See, *e.g.*, *Mauri* v. *S.S. Sag Harbor*, 227 F.Supp. 661 (D.Md. 1964).

The Court now considers another branch of plaintiff's argument,—that, as a matter of statutory interpretation of 46 U.S.C. §596, the word "wages" encompasses the cost of transportation.

"Wages" are defined variously as (a) "Salary", "payment of a usually monetary remuneration by an employer for labor or services usually according to contract and on an hourly, daily or piecemeal basis and often including bonuses, * * * and amounts paid by the employer for insurance, pensions * * * and other benefits, * * *", Webster's Third New International Dictionary (1961); (b)

16. The parties cannot, without more, make the contract part of the statute. They cannot expand the scope of the statute by private contract. However, by appropriate language, the parties can, as a matter of private agreement, include in their contract provisions obligating the shipowner to furnish transportation immediately upon discharge of a seaman; and imposing a "double wages" penalty upon the shipowner for breach of the contract.

The parties did in fact provide for penalty payments in certain cases of delay in payment of wages. *See* Union Agreement, Section 13(g).

"money that is paid or received for work or services", "earnings", and "emolument"; The Random House Dictionary of the English Language (1967); and (c) "in maritime law the compensation allowed to seamen for their service on board a vessel during a voyage", Black's Law Dictionary (4th ed. 1957).

The dictionary only highlights the generally recognized fact that the term "wages" may mean monetary salary alone or it may, in a given case, include some or all non-cash fringe benefits, which are prevalent in contemporary employment arrangements.

The statute must be interpreted in the light of its dominant purpose and policy. *See, e.g., In the Matter of Sleep Products, Inc.*, 141 F.Supp. 463, 468-9 (S.D.N.Y. 1956); *aff'd sub nom. Local 140 Security Fund* v. *Hack*, 242 F.2d 375 (1957), *cert. denied*, 355 U.S. 833 (1957).

The basic purpose of the Seaman's Acts 46 U.S.C. §541 *et seq.*, was to improve the surroundings and conditions of American seamen. Committee on the Merchant Marine and Fisheries, H.R. Rep. No. 1657, 55th Cong., 2d Sess. 1-3 (1898). Section 596 in particular was intended to provide for the prompt payment of wages to a discharged seaman, *id.* at 3; *See Collie* v. *Fergusson*, 281 U. S. 52 (1930), to insure that he would not be turned ashore with little or no money in his pocket. *See Malanos* v. *Chandres*, 181 F.Supp. 189 (N.D.N.Y. 1959). Because of his impecuniousness, the seaman was peculiarly exposed to arbitrary and sometimes unscrupulous acts of his employers, *see Underwood* v. *Isbrandsten Co., Inc.*, 100 F.Supp. 863, 865 (S.D.N.Y. 1951), who might pressure him to release claims by withholding sums to which he was indisputably entitled. *See, e.g., Prindes* v. *the S.S. African Pilgrim*, 266 F.2d 125, 128 (9 Cir. 1959); *Hume* v. *Moore-McCormack Lines*, 121 F.2d 336 (2d Cir. 1941). The primary objective of §596 is to prevent such coercion by deterring a shipowner or master

from improperly making a deduction from a seaman's wages. *See Swain* v. *Isthmian Lines, Inc.*, 360 F.2d 81 (3 Cir. 1966).

For the general reason that seamen are wards of admiralty and the specific reason that §596 is remedial in nature, many courts have states that §596 should be interpreted liberally. *See, e.g., Johnson* v. *Isbrandsten Co., Inc.*, 343 U. S. 779, 782 (1951), *affirming*, 190 F.2d 991 (3 Cir. 1951); *Bainbridge* v. *Merchants & Miners Transportation*, 287 U. S. 278, 282 (1932); *Mystic SS. Co.* v. *Stromland*, 20 F.2d 342 (4 Cir. 1927);[17] *cf. Calmar Steamship Corp.* v. *Taylor*, 303 U. S. 525, 529 (1938); *see generally* E.C. Benedict, *The Law of American Admiralty*, §621 at 282, Vol. 4 (6th ed. 1940).

However, with regard to the provision in §596 for double wages, Judge Learned Hand (then a district judge) warned: "Still they (seamen) remain in some measure persons sui juris, and there is neither justice nor policy in aiding them to catch at penalties, where they have suffered no wrongs." *Petterson* v. *United States*, 274 F. 1000, 1003 (S.D.N.Y. 1921). *Cf. The American Shipper*, 3 F.Supp. 184, aff'd 70 F.2d 632 (2d Cir. 1934), *aff'd* as *McCrea* v. *United States*, 294 U. S. 23 (1935); *Butler* v. *U. S. War Shipping Administration*, 68 F. Supp. 441, 445 (E.D. Pa. 1946) ("The essential purpose of Rev. Stat. §4529, 46 U.S.C.A. §596 is to penalize.").

A leading commentator, referring to the dual remedial and penal characteristics of §596, states:

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17. All of the cited cases deal with the question whether specific conduct on the part of the master or shipowner constituted "sufficient cause" for withholding wages under §596. They do not deal with the threshold issue whether a given item withheld is in fact "wages" under §596. A liberal approach to the issue of "sufficient cause", which is by its nature a vague standard requiring case by case judicial definition, does not *ipso facto* lead to a similar approach on the issue before this Court.

> "The essential spirit and purpose of the statute are to financially punish the master and owner for neglectful failure to pay wages, and the sum is often far out of proportion to the actual unpaid wages involved. It can truly be said that the essential purpose is to penalize, and it is so regarded in the maritime industry; * * *" M.J. Norris, The Law of Seamen, §382 (2d ed. 1962).

Regardless of the characterization of §596 as remedial or penal, that provision must be construed so as to effectuate the legislative purpose of ameliorating the specific injustices that the Congress sought to eliminate. *Cf. Zarroga* v. *Texas Company*, 284 F.2d 657, 660 (3 Cir. 1960). The Court of Appeals for this Circuit has declared:

> "The time has long since passed when platitudes as to 'plaintmeaning' of strictures as to the strict construction of penal statutes can procure judicial refusal to reach a result sufficiently indicated by the legislature's words.: *Postma* v. *Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen; and Helpers of America, Local* 294, 337 F.2d 609, 610 (2 Cir. 1964).

Armed with a knowledge of the purpose of §596 and the statute of which it is a part, the court has examined various cognate sections to ascertain whether they illuminate the meaning of the word "wages"[18] in the context of this case.

18. The word "wages" is used frequently in 46 U.S.C. §§591-605. While the meaning of the word "wages" may vary slightly from section to section, depending on the context, the Court observes that the word is used consistently to connote salary only. For example, §594 entitles a seaman who is improperly discharged before he earns one month's wages to one month's "wages" in lieu of damages for breach of contract. The term "wages" thus used is manifestly limited to salary as distinguished from fringe benefits.

46 U.S.C. §593 (1964) deals with the situation where a seaman's employment is terminated before the end of the voyage on account of loss of the vessel or shipwreck. It provides for his transportation to the port of shipment, as provided in Sections 678 and 679. Sections 678 and 679 create the obligation of the United States Government to repatriate certain classes of seamen who are stranded in foreign ports. These provisions signify that the Congress, aware of the special problems facing seamen in connection with repatriation and transportation, sought either to improve or codify the existing law. *See generally* H.R. Rep. 1657, supra at 3.[19] The very use of the term "transportation" in the statute supports the thesis that the Congress did not employ the term "wages" in §596 or in any other cognate section as including transportation, which was regarded as a separate and distinct problem. An examination of the mechanics of transportation in the maritime industry will avoid an abstract resolution of this issue.

The general maritime law makes no provision for repatriation of seamen shipwrecked abroad or for repatriation of sick or disabled seamen. *See Norris, supra* §§416, 417. Legislation enacted as early as 1872 created the right of the shipwrecked mariner to be returned from a foreign port to his home. Shipping Commissioners Act of June 7, 1872, C. 322, §33, 17 Stat. 269. *Id.; see Harvey* v. *Smith*, 35 F. 367, 368 (S.D.N.Y. 1888). In the absence of legislation, the seaman must look to the maritime case law for his protection. *See, e.g., The Hawaiian*, 33 F.Supp. 986, 987 (D.C.Md. 1940). While the case law on the question of transportation is far from clear, a brief survey will serve the Court's present purpose.

19. The statutes deal only with the Government's obligation to provide return transportation from a *foreign port* to the United States, and not with transportation from one port in the United States to another. The latter matter is left to the case law and/or to the contracting parties.

It would appear to be maritime case law that—in addition to maintenance, cure and wages to the end of the voyage—a sick or disabled seaman is entitled to be transported home at the expense of the ship. *See, The Centennial*, 10 F. 397 (E.D. La. 1881); *Norris, supra* §417. Although it is clear that this principle protects a seaman discharged in a foreign port it is not equally clear that such protection is applicable to a seaman who is discharged for illness at a port within the United States other than the port of original sign-on.[20] The problem may, in fact, be academic because many union agreements or shipping articles provide for transportation and, consequently, the seaman can rely

20. *The William Penn*, 1925 AMC 1316 (E.D.N.Y. 1925) and *Miller v. United States*, 51 F.Supp. 924, 925 (S.D.N.Y. 1943) merely decided, without discussion, that the injured seamen in the particular cases were entitled to transportation to the port of shipment. The cases do involve seamen discharged in ports within the United States. However, the opinions do not disclose whether the duty to furnish transportation arose under the shipping articles or a union contract, or was an obligation imposed by law on a noncontractual basis.

In *The Hawaiian*, 33 F.Supp. 985 (D.C. Md. 1940), the court considered the question of whether an injured seaman's conduct (when he was discharged, he obtained other employment) can ever be viewed as evidencing his election not to return to the home port and thus not to claim transportation. In deciding in favor of the seaman, the court summarized (33 F.Supp. at 987) its view of "the sound rule":

> "The seaman is entitled to be transported free of charge back to the port where he originally signed on, provided he makes the demand for such transportation within a reasonable time after he has recovered his health, * * *"

The case, called "a close one" by the court, involved transportation from one port in the United States to the port of sign-on in the United States and relied on admiralty doctrine rather that on any union agreement between the shipowner and the seaman.

The paucity of reported cases on the precise point does not, however, warrant the conclusion that it is well-settled that the injured seaman has the right to be transported back to the port of original sign-on where he is discharged for injury within the United States.

on his contract. *See, e.g., Nelson* v. *Moore McCormack Lines, Inc.*, 201 F.Supp. 40 (S.D.N.Y. 1961), *aff'd*, 297 F.2d 936 (2d Cir. 1962); *Norris, supra* §426, n.7, §436, n.1.

A seaman who is improperly discharged at a foreign port is entitled to recover transportation to either the final port of discharge or the port of shipment. *See, e.g., The Mount Everest*, 14 F.2d 479 (5 Cir. 1927); *Alaska S.S. Co.* v. *Gilbert*, 236 F. 715 (9 Cir. 1916); *cf. Schwark* v. *S.S. Rio Macareo*, 249 F.Supp. 375 (E.D.La. 1966); *Sellers* v. *U.S. Lines Co.*, 89 F.Supp. 254, 256 (N.D.Cal. 1949); *The Herbert L. Rawding*, 55 F.Supp. 156 (E.D.S.C. 1944). It cannot be asserted dogmatically, however, that this protective principle extends to the wrongful discharge of a seaman in a port within the United States. The rationale for recovery, essentially one of damages for breach of contract, would seem to warrant application of the principle without regard to the place where the improper discharge occurred.

Transportation is sometimes provided for in the shipping articles, but more frequently is a major subject in a union agreement. The reported cases disclose that the union agreement usually codifies the legal duties of the shipowner with regard to transportation, but often goes further by requiring the owner to furnish transportation where the law imposes no duty.[21] Moreover, the union agreement may obligate the shipowner to pay subsistence to the seaman and a daily wage stipend while travelling, in addition to the general provisions for return passage, all under the heading of "transportation."

At this point of the discussion, it would be helpful to examine some practical aspects of the mechanics of furnishing transportation.

21. For example, Section 29 of the Agreement provides for transportation of a seaman from a port in the United States to the original port of engagement upon termination of the voyage in its normal course.

The reported authorities indicate that the injured seaman is customarily brought home through arrangements made by the shipowner himself. The owner secures return passage from a foreign port, possibly on one of his ships or, where the discharge is within the United States, he furnishes the seaman with a plane or rail ticket. There is, in fact, rarely a need to pay the seaman any cash in such situations.[22] In addition, there may understandably be a delay between the time when the seaman is discharged from the hospital or from the ship and the time it takes the employer to secure return passage.[23]

Similarly, where a seaman is entitled to transportation because of improper discharge, he will rarely receive any payments or even return transportation at the time of his discharge, but will most likely be compelled to litigate his right to transportation after after his employer's refusal to provide it.[24]

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22. Likewise, where a union contract exists, the provisions ordinarily obligate the shipowner to furnish transportation via air or rail, rather than to pay any cash. Payments of cash are, however, made where the union agreement calls for additional items, such as subsistence or a daily wage allowance. Cash may also be paid where the agreement allows the seaman to elect to take a liquidated sum in lieu of transportation.

23. Section 35 of the Agreement provides, for example, for the manner of maintenance and cure payments during this "waiting period":

> "(b) In the event a licensed engineer must leave his vessel in a foreign port because of illness or injury * * * he shall receive $8.00 per day maintenance and cure from the time of his discharge from the hospital until return transportation is made available."

24. Where the owner is aware of the fact that the discharge is improper, but for some reason wishes to terminate the contract with a seaman, he may provide the seaman with passage money home. For the most part, the litigated cases involve situations in which the employer contends that the discharge was proper and that, therefore, he was not obligated to furnish transportation. In such situations, it is unreasonable to expect an employer to provide transportation immediately upon discharge; and the seaman's only remedy is to recover after a court declares the discharge to have been improper.

The foregoing discussion of the "when" and "how" of transportation highlights an important practical fact: that transportation is clearly not an item which is likely to be paid or furnished immediately upon the seaman's discharge, or within four days after his discharge, or indeed at any fixed time.

By way of summary then, firstly, the transportation is usually *furnished* by the shipowner and no cash is actually transferred; and, secondly, some time may elapse after discharge before the owner can provide adequate transportation. Section 596, which requires prompt payment of wages, cannot logically be applied to transportation. This conclusion is fortified by the separate treatment of transportation in the Seaman's Acts 46 U.S.C. §541 *et seq.* itself. *See* Opinion of the Court, *Supra* at 15a-16a.

The above-indicated conclusion is supported by other decisions considering the question of the meaning of "wages" as used in §596.[25]

It has been held that the shipowner's duty of prompt payment of "wages" under §596 does not apply to the unearned wages due to the seaman injured in the service of the vessel, *see, e.g., Yoffe* v. *Calmar S.S. Corp.*, 23 F.Supp. 629 (E.D.Mo. 1938): *Norris, Supra* §404; or to the maintenance and cure benefits owed to the same seaman. *See, e.g., Isthmian Lines* v. *Laire*, 334 F.2d 521 (5 Cir. 1964); *Clinton* v. *Joshua-Hendy Corp.*, 277 F.2d 447 (9 Cir. 1960);

25. The authorities have unanimously held that a "war bonus" is "wages" within the meaning of §596. The essential character of the so-called "bonus" is additional wages for extra-hazardous service and is, in reality, an integral part of the seaman's wages and not a typical bonus payable at the discretion of the employer. The label "bonus" in no way alters this reality; and, consequently, the withholding of a war bonus without sufficient cause gives rise to the double wage penalty under the statute. *See, e.g., Glandzis* v. *Callinicas*, 140 F.2d 111 (2 Cir. 1944); *Lakos* v. *Siliaris*, 116 F.2d 440 (4 Cir. 1940); *The Herbert L. Rawding*, 55 F.Supp. 156 (E.D.S.C. 1944).

These cases do not aid plaintiff's contention that transportation is "wages". If anything, they cut the other way and lend support to the proposition that the work "wages" is confined to salary.

Page v. *United States*, 177 F.2d 601 (9 Cir. 1949); *Mauri* v. *S.S. Sag Harbor*, 227 F.Supp. 661 (D.Md. 1964); *see generally Morris Supra* §§404, 576.

Payment of earned wages at the time of discharge on account of illness constitutes the performance of the shipowner's statutory duty to the seaman; and no penalty can be assessed for the withholding of unearned wages, due to time subsequent to the date of discharge. Analogously, where a sailor is improperly discharged, the shipowner executes his statutory duty by tendering earned wages upon discharge. When a court finally determines that the discharge was, in fact, wrongful, the seaman may recover unearned wages to the end of the voyage, but no penalty applies. *Cf. Forster* v. *Oro Navigation Co.*, 128 F.Supp. 113 (S.D.N.Y. 1954), *aff'd*, 228 F.2d 319 (2 Cir. 1955).

The rationale of these holdings is two-pronged. The first reason—which relates to unearned wages—is that the date upon which a voyage will in fact terminate is not capable of determination[26] when a seaman is discharged on account of illness. Therefore, claims for payment of unearned wages will not actually be settled until the voyage shall have been completed. Congress could not have intended §596 to apply to such unearned wages which cannot, as a practical matter, be paid immediately upon discharge.[27] *See, e.g., Yaffe* v. *Calmar S.S. Corp.*, *supra*.

Similarly, even after the obligation to pay maintenance and cure arises, payments are made only for so long as

26. Most shipping articles do not specify a specific termination date, but rather provide that the voyage will last for a time not exceeding a specified number of months. The termination date cannot, therefore, be known until it is reached. *See Norris, supra* §112.

27. Furthermore, the shipowner may in some instances doubt the legitimacy of the seaman's illness and wish to conduct an investigation before paying the claim for unearned wages. Prompt payment of the undisputed portion of a seaman's wages—the wages earned until the date of discharge—should, in such a case, satisfy the statutory duty imposed by §596, leaving the owner free to make adequate inquiries into the seaman's claim.

maintenance and cure costs are in fact incurred; and the amounts owed to an injured seaman cannot be ascertained and calculated upon his discharge. On the contrary, periodic claims are filed with the owner. *See, e.g., Robinson* v. *Swayne & Hoyt, Ltd.*, 33 F.Supp. 93, 94-5 (S.D.Cal. 1940).

The second reason articulated by the authorities for holding that maintenance and cure and also unearned wages are not "wages" within the meaning of §596 has been expressed in the following words:

> "This statute (§596) obviously refers to earned wages under the contract memorialized by the shipping articles. It has no relation to M-W-C wages which, springing out of the relationship of ship and seaman, not the employment contract, reflect the law's concern for the seaman becoming sick, disabled or ill in the service of the ship. *Gilmore & Black, Admiralty*, §§6-6, 6-13, at 253, 271 (1957); *Norris, The Law of Seamen*, §§543-48 (2d ed. 1962); *Cortes* v. *Baltimore Insular Line*, 1932, 287 U. S. 367, 53 S.Ct. 173, 77 L.Ed. 368, 1933 A.M.C. 9; *Calmar Steamship Corp.* v. *Taylor*, 1938, 303 U. S. 525, 58 S.Ct. 651, 82 L.Ed. 993, 1938 A.M.C. 341; *The Osceola*, 1903, 189 U. S. 158, 175, 23 S.Ct. 483, 47 L.Ed. 760." *Isthmian Lines, Inc.* v. *Haire*, 334 F.2d 521, 523 (5 Cir. 1964), *aff'g.* 231 F.Supp. 606 (S.D. Tex. 1963).

The duty to provide maintenance and cure and unearned wages is thus regarded as one implied and imposed by law; they are not "wages" in the same sense as wages which have been expressly agreed upon in consideration of services rendered. Even if the contract between the seaman and the shipowner makes no provision for maintenance and cure and unearned wages, they are recoverable under the general maritime law. But these items do not fall

within the ambit of legislative concern for prompt payment of earned wages.

Both of the foregoing reasons are equally applicable to the item of "transportation". If the general maritime law requires the shipowner to transport the injured seaman from a port of discharge within the United States to the port of sign on irrespective of any contractual obligation, then "transportation" is closely analogous to the items of maintenance and cure and unearned wages; and, by force of the second reason discussed above, should not be treated as "wages" under §596.

However, even if "transportation" is a matter governed by contract alone, the Court holds that "transportation" is not "wages" within the meaning of §596. The Court's discussion of the practical mechanics for the payment of transportation demonstrates that, like the payment of maintenance and cure and unearned wages, transportation is not an item that is paid immediately upon the seaman's discharge.

To recapitulate, the Court's conclusion is reached through an analysis of the history of the item of "transportation" in the general maritime law, a consideration of the practical manner in which transportation is furnished, and an inquiry into the treatment of the subject of transportation in the Seaman's Acts 46 U.S.C. *et seq.*

In the interest of complete discussion, the Court notes that extensive research has uncovered no cases in which a seaman requested penalties under §596 for the wrongful witholding of "transportation".[28]

28. Plaintiff argues that *Johnson* v. *Isbrandsten Co.*, 91 F.Supp. 872 (E.D. Pa. 1950) controls the issue, for the asserted reason that the case holds that transportation is an item of wages under §596. The case is unpersuasive. It involved a seaman's claim for earned wages which had not been paid by the master who had deducted a claim against the seaman for damages from these earned wages. The district court held that such a set-off was improper under §596, and

Opinion of United States District Court

The Court hereby grants the plaintiff's claims for uncarned wages in the amount of $1,257.00; maintenance and cure in the amount of $392.00; and transportation in the amount of $332.33. The Court hereby denies plaintiff's claim for penalty double wages.

Judgment shall be entered forthwith in accordance with this opinion.

So ordered.

Dated: New York, New York
March 31, 1969.

William B. Herlands
U. S. D. J.

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earned wages were awarded. The double wages sought for improper withholding of wages under §596 were not awarded, the court finding that the circumstances demonstrated sufficient cause for the withholding.

The seaman additionally claimed a liquidated amount for transportation under a union contract, which was awarded by the court, holding that a set-off against transportation was likewise improper. The rationale, as stated is: "This figure (transportation) must be considered an item of wages within the meaning of §596 and, therefore, what has been said with respect to the respondent's defense to the wage claim applies to the claim for transportation." 91 F.Supp. at 874. (No claim for penalty for wrongful withholding of transportation had been entered).

On appeal to the Third Circuit, the case was affirmed, the sole issue being the availability of set-off. 190 F. 2d 991 (3 Cir. 1951). The Supreme Court, affirming the Circuit Court, again, only on the question of set-off, states: "(P)etitioner's counter claim may not be set off against the allowance made to respondent for transportation to his port of signing on. That allowance is proportionally as important to him and to his welfare as is the balance due him for earned wages." 343 U.S. 779, at 789 n. 12 (1951). The Supreme Court thus implicitly rejected the district court's statement that a set-off could not be made against transportation, for the reason that transportation is "wages". On the contrary, the Supreme Court treated transportation as an allowance, separate and distinct from "* * * the balance due him for earned wages", but considered the item important enough to disallow the set-off. This case supports this Court's conclusions and is the closest any case has come to an actual holding that transportation is not wages within the meaning of §596.

Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-fifth day of February one thousand nine hundred and seventy.

Present:

Hon. J. EDWARD LUMBARD,
Chief Judge,

Hon. ROBERT P. ANDERSON,
Circuit Judge,

Hon. THOMAS F. CROAKE,
District Judge.

PETER J. LADZINSKI,
Plaintiff-Appellant,

v.

THE SPERLING STEAMSHIP AND TRADING CORP.,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellant.

A. DANIEL FUSARO
Clerk

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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, [redacted] 1970

No. [redacted] 181

PETER J. LADZINSKI,

Petitioner,

against

SPERLING STEAMSHIP & TRADING CORP.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

EDWIN K. REID
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New York, New York 10006

HOWARD M. MCCORMACK
On the Brief

IN THE

Supreme Court of the United States

October Term, 1969

No. 1607

PETER J. LADZINSKI,

Petitioner,

against

SPERLING STEAMSHIP & TRADING CORP.,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

I

Argument

At the outset it must be noted that the District Court and the Court of Appeals decided this case upon undisputed facts in finding that the Petitioner's claim for transportation under the General Maritime Law and under Section 29 (1) (a) of the Union Agreement providing for transportation, wages and maintenance during travel were not "wages" and would not give rise to a claim for double wages within the meaning of 46 U.S.C. 596 (1964).

Respondent, owner of the "SS East Hills" employed Petitioner at Chester, Pennsylvania to serve as third assistant engineer. Petitioner signed off-articles at San Francisco for medical reasons and was paid all earned wages.

Upon demand for return transportation to Chester, the Master referred the Petitioner to Respondent's New York office. Petitioner elected to travel at his expense from San Francisco to Baltimore, Maryland via bus.

After arrival at Baltimore, stipulated by the parties to be the original port of engagement in lieu of Chester, the Petitioner requested the Respondent to pay him first class rail transportation lower berth, three days' wages and subsistence of three days at $6.00 per day, a total of $322.33. The request was made under Section 29 (1) (a) entitled "Transportation", of the agreement entered into between Respondent and the Seaman's Union, the National Marine Engineers' Beneficial Association District No. 1.[1] Upon the failure of the Respondent to pay $322.33,[2] the Petitioner demanded a penalty of two days' wages for each day's transportation withheld.

1. Section 29 entitled "Transportation" is set forth in the opinion of the District Court at pages 5 (a) and (b) of the Appendix to Respondent's Brief. The Appendix is referred to hereinafter as "A". The other pertinent facts of the Agreement are Section 7, captioned WAGES, Section 4 (a) (d) dealing with discharge, 4 (c) dealing with pay-off procedure upon discharge and Section (1) providing for replacement engineers. The material parts of Section (7), (1) and (4) are set forth in the District Court's Opinion (A, 11a). Section 35 of the Agreement provides for maintenance and cure (A, 19a).

2. The District Court held Respondent liable for $322.33. At the trial Respondent tendered judgment and Petitioner accepted judgment to satisfy Petitioner's claim of $1,257.00 for unearned wages and $392.00 for maintenance and cure (A, 4a).

An important practical fact is that transportation is clearly not an item which is likely to be paid or furnished immediately upon the seaman's discharge, or within four days after his discharge, or indeed at any fixed time. Transportation is usually furnished by the shipowner and no cash is actually transferred. Sometime may elapse after discharge before the owner can provide adequate transportation (A, 20a).

The District Court considered and disposed of all the explicit and implicit arguments advanced by the Petitioner. The contentions urged by the Petitioner in his Petition are no different from the contentions advanced by him below. The Petitioner has not questioned the District Court's finding of fact nor has he shown that the District Court and the Court of Appeals did not correctly apply the law to the facts.

The Petitioner urged below that under Section 29(T) (a) of the Union Agreement and implicitly under the General Maritime Law, transportation and wages and maintenance during transportation were "wages" within the meaning of 46 U.S.C. 596. The District Court found that under Section 7 of the Union Agreement, in contrast to Section 29 (1) (a), wages were dealt with separately from transportation and were limited to services rendered (A, 11a).

The Court next considered the practical aspects of transportation and found as a fact, under case law, that transportation was clearly not an item which is likely to be paid or furnished immediately upon the seaman's dis-

charge or within four days after his discharge as provided with respect to wages under 46 U.S.C. 596 (A, 21a).

Lastly the Court considered the subject of transportation in the Seaman's Act 46 U.S.C. 541, et seq., and concluded that it was the intent of Congress, as evidenced by Congressional Hearings and case law, that wages within the meaning of 46 U.S.C., Section 596 was a subject which was dealt with separately and distinctly from transportation (A, 21a, 14a-16a).

The District Court stated that:

> "To recapitulate, the Court's conclusion is reached through an analysis of the history of the item of 'transportation' in the general maritime law, a consideration of the practical manner in which transportation is furnished, and an inquiry into the treatment of the subject of transportation in the Seaman's Act, 46 U.S.C. et seq.
>
> In the interest of complete discussion, the Court notes that extensive research has uncovered no case in which a seaman requested penalties and §596 for the wrongful withholding of 'transportation'."

The District Court stated in footnote 28 (A, 24a) with reference to this Court's decision in *Johnson* v. *Isbrandtsen*, 343 U.S. 779 (1951):

> "This case supports this Court's conclusion and is the closest any case has come to an actual holding that transportation is not wages within the meaning of Section 596."

II

Reasons for Denial of the Writ

1. The Decision Below Is Not in Conflict With That of This Court in *Johnson* v. *Isbrandtsen Co.*, 343 U.S. 779 (1951) or With the Court of Appeals for the Second Circuit in *Nelson* v. *McCormack Lines, Inc.*, 297 F.2d 936 (2 CA 1962), cert. den. 369 U.S. 873.

This Court did not hold in the *Johnson* case that "transportation" is "wages". Quite the contrary, the District Court's analysis of that case is correct and is the closest any case has come to an actual holding that transportation is not wages within the meaning of Section 596.

In *Nelson*, 201 F. Supp. 40, the District Court pointed out at page 43 that Libellant's claim for wage penalties was based on earned wages to the termination of the voyage. The claim was denied. The other facet of the *Nelson* case dealt with wrongful discharge. The Union Agreement there provided for return transportation including wages and subsistence incident thereto to the final port of discharge on the west coast of the United States. Plaintiff was discharged at New York. In an action for breach of contract the District Court allowed plaintiff his transportation to the west coast together with wages and board incident to that journey. That was exactly what the shipowner offered plaintiff under the Union Agreement from the very beginning.

The Second Circuit affirmed and noted that the District Court dealt with penalties on one hand for the alleged failure to pay accrued wages and on the other hand damages for breach of contract. Neither Court held that transportation

is wages. The District Court in the instant case cited *Nelson* (A, 18a) as a case where transportation was stipulated in the Union Agreement and pointed out that a seaman may rely on his contract for recovery.

2. The Question Presented Is Not of Sufficient Importance to Require Adjudication by This Court.

The District Court found, and the Circuit Court affirmed, that transportation is not wages within the meaning of Section 596. The District Court's conclusion was reached, as pointed out, through an analysis of the history of the item of transportation in the General Maritime Law, a consideration of the practical matter in which transportation is furnished, and an inquiry into the treatment of the subject of transportation in the Seaman's Act, 46 U.S.C. 541 et seq. Unless this Court is willing to disregard the findings of the District Court and the affirmance by the Circuit Court there is nothing of importance for this Court to decide. It is respectfully submitted that such a displacement of the findings of the Courts below would be abhorrent to how the item of transportation is treated in the General Maritime Law, the practical application of that item by the industry and the intent of Congress in enacting the Seaman's Act, 46 U.S.C. 541 et seq.

CONCLUSION

The judgment below should be sustained in all respects.

Respectfully submitted,

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